

Gaines, Cynthia

From: Metzger, Philip
Sent: Thursday, May 02, 2013 9:23 AM
To: Gaines, Cynthia
Subject: FW: Chuitna Coal Strip Mine
Attachments: 2013 04 29 Tfa to ADFG T16 follow up.final.pdf, Cook Inletkeeper - EPA Region 10 Letter 20130501.pdf

Don't know if this needs to be logged in – it's a cc to the Acting Administrator with original to R10.

Philip C. Metzger
Counselor to the Deputy Administrator
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----- Forwarded by Philip Metzger/DC/USEPA/US on 05/02/2013 09:19 AM -----

From: Bob Shavelson <bob@inletkeeper.org>
To: Dennis McLerran/R10/USEPA/US@MSO365
Cc: Bob Perciasepe/DC/USEPA/US@EPA, Nancy Stoner/DC/USEPA/US@MSO365, Bob Sussman/DC/USEPA/US@MSO365, Dan Opalski/R10/USEPA/US@MSO365, Linda Anderson-Carnahan/R10/USEPA/US@MSO365, Jamey Stoddard/R10/USEPA/US@MSO365, Michael Szerlog/R10/USEPA/US@MSO365, Jim Balsiger <jim.balsiger@noaa.gov>, geoff.haskett@fws.gov
Date: 05/01/2013 08:27 PM
Subject: Chuitna Coal Strip Mine

Dear Mr. McLerran -

Attached please find a letter regarding the proposed Chuitna coal strip mine in Upper Cook Inlet, Alaska.

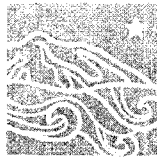
Also attached please find a letter responding to the Alaska Department of Fish & Game's recent refusal to define clear rules to protect wild salmon habitat from coal strip mining.

Thank you and let me know if you have any questions -

Bob Shavelson
Cook Inletkeeper
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Protecting the Cook Inlet watershed and the life it sustains since 1995.

Join today! www.inletkeeper.org(See attached file: Cook Inletkeeper - EPA Region 10 Letter 20130501.pdf)(See attached file: 2013 04 29 Tfa to ADFG T16 follow up.final.pdf)



TRUSTEES FOR ALASKA

SUSTAIN | PROTECT | REPRESENT

April 29, 2013

VIA E-MAIL AND FIRST CLASS MAIL

Commissioner Cora Campbell
Alaska Department of Fish and Game
P.O. Box 115526
1255 W. 8th Street
Juneau, AK 99811-5526

Re: Denial of Petition to Protect Salmon Habitat

Dear Commissioner Campbell:

Thank you for your prompt response to the March 13, 2013 petition submitted to your office regarding destructive activities in salmon streams and requesting public notice for some Title 16 permit applications. You rejected the request that ADF&G ban certain destructive practices within streams that have been designated as important for the spawning, rearing, or migration of anadromous fish. You also rejected the request that ADF&G provide public notice and comment on written applications for projects that use, divert, obstruct, pollute, or change the natural flow or bed of an anadromous water body.

It was disappointing that you declined to provide a public process for Title 16 permits. Notice and comment can provide valuable information to the agency in evaluating permit applications. Moreover, the request would have applied only to those permits that ADF&G has already determined are significant enough to require a written permit application. Thus, while it would provide some additional administrative burden for ADF&G, it would be only for projects that have the potential to significantly impact habitat and are already designated to receive increased scrutiny.

Your rejection was partially based on your conclusion that public notice for Title 16 permits is not expressly required by the legislature or the Alaska Constitution. While not expressly required in AS 16.05.871, the Commissioner is empowered to manage, protect, maintain, improve, and extend the fish resources of the state,¹ and public notice is certainly consistent with two of ADF&G's guiding principles: to encourage active involvement by the public in ADF&G's decision-making processes and to build mutual trust and respect between the

¹ AS 16.05.020 states, "The Commissioner shall . . . (2) manage, protect, maintain, improve, and extend the fish, game and aquatic plant resources of the state in the interest of the economy and general well-being of the state"

department and the public.² In a letter to Representative Austerman in 2011 about two current large mine proposals in Alaska (Pebble and Chuitna), you stated that the mine project permitting decisions, “including those that impact streams, will be subject to extensive public notice and comment.” That is not currently the case. Title 16 permit applications for tributaries of the Chuitna that will be impacted by PacRim’s proposal are currently not subject to any public notice and comment.

You indicated the reason for your denial of the request to ban certain strip mining activities in salmon habitat was that ADF&G already has the authority to prohibit an activity by denying a permit. This determination is made by ADF&G biologists on a case-by-case basis when reviewing proposed activities individually. But, as stated elsewhere in your letter, average review time for these permits is 7.1 days, and ADF&G does not have adequate staff and funding to provide for even a 20 day review period for these permits. Regulations that identify and prohibit the most destructive activities would streamline the Title 16 process and free up resources for evaluation of permits applications for projects that could be made compatible with salmon conservation goals.

The recent announcement of commercial salmon fishing in the Northern District of Upper Cook Inlet highlights the need for better habitat protection. King salmon from the Chuitna River drainage have been designated as a stock of management concern. Aggressive habitat protection should be part of the Department’s arsenal in dealing with the growing Chinook salmon crises.

Title 16 is an important law that empowers ADF&G to protect our salmon resources. Simply “availing” the department of the opportunity to follow other state and federal permit processes abdicates ADF&G’s authority to protect salmon habitat. ADF&G’s Title 16 permit process is the only place where state fisheries experts are entitled to review data and make binding decisions that will protect fish. We urge you to make the process a meaningful one that carries out the department’s mission to protect, maintain, and improve the fish resources of the state.

There is growing concern that ADF&G is not taking responsible and prudent steps to protect the increasingly threatened Chinook runs of Cook Inlet and other fish habitat throughout the state. Please consider implementing some kind of public notice and comment procedure for these and other controversial fish habitat permits.

Sincerely,

/s/ Valerie Brown

Valerie Brown
Counsel for Petitioners
TRUSTEES FOR ALASKA

² See Alaska Dep’t of Fish & Game, Mission and Guiding Principles, <http://www.adfg.alaska.gov/index.cfm?adfg=about.mission> (last visited Apr. 26, 2013).

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May 1, 2013

Dennis McLerran, Regional Administrator
USEPA Region 10
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

RE: ALASKA'S INABILITY OR UNWILLINGNESS TO PROTECT WETLANDS
& SALMON HABITAT FROM LARGE-SCALE COAL STRIP MINING

Dear Mr. McLerran:

Introduction

Thank you again for making the time to meet with Cook Inletkeeper and our partners during the Alaska Forum on the Environment this year. As you know, we work to protect wild Alaska salmon and the many communities, cultures and economies our magnificent salmon resources support throughout our great state.

I am writing now because we are increasingly concerned the State of Alaska is pressing ahead under the rubric of "streamlining" with a regulatory agenda that undermines democratic participation and rolls back important protections for our waters, wetlands and fisheries (see Appendix A). More specifically, we are gravely concerned the State of Alaska cannot or will not adequately protect our wetlands and salmon habitat from significant degradation in the face of large-scale coal strip mining in our coastal watersheds.

Coal Strip Mining & Salmon Streams

In public statements on resource development, Governor Parnell has promised Alaskans on numerous occasions he would "never trade one resource for another."¹ More recently, in an effort to curry favor with Alaska fish marketing interests, he stated "sustainability is in our DNA."² Alaska seafood marketing does in fact rely largely on the wild, sustainable brand that separates Alaska salmon from farmed fish.³ Yet the Parnell Administration's

¹ See, e.g., Governor Parnell Comments to the Alaska Resource Development Council (Sept. 3, 2009)(available at: <http://gov.alaska.gov/parnell/press-room/full-press-release.html?pr=5030>).

² See John Sackton, *Parnell backs state fisheries sustainability certification program*, The Cordova Times (Mar. 18, 2013)(available at: <http://www.thecordovatimes.com/article/1312parnell-back-state-fisheries-sustainability>).

³ The Alaska Seafood Marketing Institute (ASMI), for example, relies heavily on the "sustainability" brand to market Alaska salmon:

- Sustainability: Means fisheries can exist long-term without compromising the surrounding ecosystem
- All Alaska seafood is wild and sustainable, and it is managed for protection against overfishing, habitat damage, and pollution
- Alaska is dedicated to preserving and protecting this superior seafood for future generations

actions bely its words, and it appears especially determined to undermine wetlands, water and fish habitat protections to facilitate development of the proposed Chuitna coal strip mine in Upper Cook Inlet. For example:

Unsuitable Lands Petition (ULP): In January 2010, Inletkeeper and others filed a petition (“Unsuitable Lands Petition” or “ULP”) under the Alaska Surface Mining Control & Reclamation Act (ASMCRA) to designate the salmon streams and riparian areas within the proposed Chuitna coal project “unsuitable” for large scale coal strip mining.⁴ The state took 21 months and finally rejected the petition.⁵ Because petitioners submitted strong evidence that there’s no scientific data to show a salmon stream can be re-built after extensive strip mining, Inletkeeper and its partners asked DNR to reconsider its decision on November 15, 2011.⁶ Now, 17 months have passed and despite repeated requests,⁷ DNR has yet to make a final decision. Meanwhile, project proponent PacRim Coal has begun to submit permit applications for the Chuitna coal strip mine, which would set a dangerous precedent as the first Alaskan project to mine completely through wild salmon streams.

Title 16 Petition: Concerned about the state’s foot-dragging on the ULP, on March 13, 2013, a diverse group of Alaskans, including commercial and sport fisherman, property owners, hunters and conservationists, petitioned ADFG to promulgate rules to 1) prohibit large-scale coal strip mining through wild salmon streams, and 2) provide Alaskans with public notice on projects that will harm salmon habitat.⁸ On April 12, 2013, ADFG Commissioner Cora Campbell issued a short, poorly-reasoned rejection.⁹ Among several disturbing rationales, ADFG stated it already had the in-house expertise to review and protect salmon habitat in the face of large strip mining projects, despite the fact the state has never rejected such authorizations in the past.

Conclusion

Alaska politicians and extractive corporations alike clamor for more predictability in our permitting processes, and it makes complete sense to have bright line rules protecting our

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- Since 1959, the Alaska Constitution has mandated that “fish...be utilized, developed and maintained on the sustained yield principle”
 - Every aspect of Alaska’s fisheries has been strictly regulated, closely monitored and rigidly enforced for nearly five decades
 - *Alaska sets the standard for precautionary resource management*
 - Alaska’s successful management practices are considered a model of sustainability for the entire world.
See <http://www.alaskaseafood.org/sustainability/> (emphasis added)

⁴ See Petition to Designate the Streambeds of Anadromous Water Bodies and Riparian Areas within the Chuit River Watershed, Alaska, as Unsuitable for Surface Coal Mining Pursuant to AS 27.21.260 (available at: <http://inletkeeper.org/resources/contents/unsuitable-lands-petition/view>).

⁵ See Alaska Department of Natural Resources, Detailed Statement of Findings & Decision (Oct. 2011)(available at: http://dnr.alaska.gov/mlw/mining/coal/chuit/pdfs/Chuitna_River_LUM_Decision_Final_102411.pdf)

⁶ See Letter from Valerie Brown, Trustees for Alaska, to Commissioner Dan Sullivan, Alaska DNR (Nov. 15, 2011)(available at: <http://inletkeeper.org/resources/contents/reconsideration-request-on-unsuitable-lands-petition/view>).

⁷ See, e.g., Letter from Chuitna Citizens Coalition et al. to Governor Sean Parnell (Nov. 20, 2012)(available at: <http://inletkeeper.org/resources/contents/parnell-letter-no-coal-mining-salmon-streams/view>)

⁸ See Petition to Prohibit Surface Coal Mining Operations in Salmon Streams (Mar. 13, 2013)(available at: [http://inletkeeper.org/press-room/Title16HabitatPetition%20\(at_download/file\)](http://inletkeeper.org/press-room/Title16HabitatPetition%20(at_download/file))).

⁹ See Letter from Commissioner Cora Campbell, ADFG, to Valerie Brown, Trustees for Alaska (Apr. 12, 2013)(available at: <http://inletkeeper.org/resources/contents/adfg-title-16-petition-rejection/view>).

renewable salmon resources from one-time resource uses that promise permanent resource degradation. If the State of Alaska refuses to provide that predictability for business and other stakeholders, EPA can and should.

We recognize EPA comes under significant scrutiny when it works to enforce our wetlands and water quality protection laws – especially in a resource-rich state like Alaska. But we also know EPA operates under laws and rules that provide it the authority to ensure our nation's wetland and salmon resources remain viable for current and future generations.

We are writing now so you have additional perspective on how natural resource decision making is unfolding in Alaska, especially with regard to the proposed Chuitna coal strip mine in Cook Inlet.

Thank you for considering this information, and please feel free to contact me with any questions at 907.299.3277 or bob@inletkeeper.org.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Bob Shavelson', with a stylized, cursive script.

Bob Shavelson
Cook Inletkeeper

Cc: Bob Perciasepe, EPA Acting Administrator
Nancy Stoner, EPA HQ
Bob Sussman, EPA HQ
Daniel Opalski, EPA Region 10
Linda Anderson-Carnahan, EPA Region 10
Jamey Stoddard, EPA Region 10
Michael Szerlog, EPA Region 10
Diane Soderlund, EPA Alaska Operations
Geoffrey Haskett, USFWS Alaska Region
James Balsiger, NMFS Alaska Region

APPENDIX A

The State of Alaska's Regulatory Oversight is Out of Balance

Increasingly, state officials and politicians are tilting the regulatory scale sharply in favor of a development-at-all-costs agenda that undermines public participation and ensures large projects will unfold unhindered. When Governor Murkowski in March 2005 moved the biologists from Alaska's Department of Fish & Game (ADFG) Habitat Division into our resource development agency – the Department of Natural Resources (DNR) – Alaskans rightly pushed back, and the Palin Administration subsequently put the biologists back where they belong – in our habitat protection agency, ADFG. Nonetheless, the process of that move, coupled with the political underpinnings that accompanied it, caused an exodus of key biologists, and resulted in an ADFG Habitat Division that today is driven more by DNR's pro-development politics than long term habitat protection.

In just the past year, we have witnessed the following rollbacks and decisions:

Eliminated the Alaska Coastal Management Program. Now, Alaska is the only coastal state in the nation without an approved coastal management program, despite the fact we have more coastline than all coastal states in the Lower 48 combined. While the Parnell Administration frequently rails against the "heavy hand" of federal oversight, the ACMP was the only law that gave Alaskans a meaningful seat at the table for federal coastal resource decisions. A citizens' initiative this past summer to reinstate the ACMP failed after large corporations threw substantial advertising dollars at the issue. In the end, Alaska's once-proud coastal management program fell because the State of Alaska and resource extraction corporations did not want local citizens or governments to have a real voice in coastal decision making. Perhaps better than any other example, this decision personifies the anti-democratic, development-at-all-costs agenda Alaska is now embracing.

Expanded Herbicide Spraying on Public Lands: Alaska recently passed new rules that deny public participation, threaten salmon streams and thwart public notice in the application of herbicides on public lands. For the past 30 years, Alaska has tightly controlled the use of toxic herbicides around our public lands and our salmon spawning areas; now, loose and ill-defined rules allow indiscriminate spraying with little oversight and no actual notice to the public. This summer, the Alaska Railroad will spray the entire corridor between Seward and Fairbanks, without serious oversight for salmon stream protection and no actual notice for Alaskan families. This is the same area – the Mat Su Valley – where fishery closures and restrictions are increasingly common due to low salmon returns.

Increased cruise ship dumping in coastal Alaskan waters. In 2006, Alaskans statewide voted to control cruise ships wastes in sensitive coastal waters. In response, the State of Alaska established a task force to consider best available technologies for cruise ship wastes. From the outset, the process was flawed: before the task force even convened, the ADEC Commissioner dismissed the person with the most public interest experience from the task force, and admitted it was due to industry pressure. Now, contrary to the will of

Alaskan voters, ADEC has pushed through new legislation that allows cruise ships to dump sewage and other wastes in large swaths of Alaska's coastal waters and habitats.

Pushed sweeping regulatory rollback legislation. This legislative session, Governor Parnell introduced HB 77 under the rubric of "permit streamlining." In reality, the bill would undermine democratic participation and empower the state to make sweeping, unilateral resource decisions. One of the bill's most troubling provisions would deny Alaskans the right to keep water in our streams for salmon (so-called "instream flow reservations"). During the legislative session, an Alaska court ruled the state violated its own rules by granting water uses to a coal company without considering an instream flow reservation filed earlier by local citizens. Now, rather than comply with its own rules, the State simply wants to change the law and remove Alaskans from the process of keeping sufficient water in our streams to support our salmon.

Violated State Critical Habitat Rules to Allow Oil Storage at the Base of an Active Volcano. The Drift River Oil Terminal is possibly the worst-sited oil storage facility in the world; it sits directly below Mount Redoubt, an active volcano on the west side of Cook Inlet. Massive eruptions in 1989 and 2009 led to facility evacuations, eliminated spill response capacities, and threatened important fisheries. In an effort to resume oil storage after the 2009 eruption, ADFG issued permits in 2012 to allow rock and boulder mining next to a salmon stream in violation of a state-designated critical habitat management plan. When Inletkeeper appealed the decision, ADFG refused to grant Inletkeeper and its members standing, arguing that only the permittee could challenge impacts to salmon and other public resources.

Violated State Critical Habitat Rules to Allow Oil & Gas Drilling Rig Storage in Kachemak Bay. Kachemak Bay is a remarkable coastal estuary in Lower Cook Inlet that witnessed the threats and impacts of oil and gas development in the 1960's and 1970's, including a sizable oil spill from a disabled jack-up drilling rig stored in the Bay. In an effort to protect this incredible resource, the State of Alaska adopted a critical habitat plan that outlawed the "storage" of drill rigs in Kachemak Bay. Nonetheless, ADFG allowed a drill rig to be stored in the Kachemak Bay critical habitat area for over 8 months this past winter, with little regard for past history, habitat or the law.

Wetland Permitting Authority: At the urging of the Parnell Administration, the State of Alaska recently adopted a new law (SB 27) to pursue Clean Water Act section 404 authorities from the federal government. Despite the fact only two states currently hold such authorities – and the fact Alaska's projected budget shortfalls cannot sustain the program in the wake of recent oil tax legislation (SB 21) – the Parnell Administration is charging headlong into this effort driven more by anti-federalism than any concern for Alaska's vast and irreplaceable wetlands resources. Like the NPDES delegation Alaska received several years ago, it's safe to assume Alaska will weaken wetlands protections if it obtains additional wetlands authorities.